

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

---

<b>UNILOC USA, INC. and UNILOC LUXEMBOURG, S.A.,</b>	§ § § § §
<b>Plaintiffs, v. ADP, LLC,</b>	§ Case No. 2:16-cv-741-JRG § (Lead) § § JURY TRIAL REQUESTED
<b>Defendant.</b>	§ § § § §
<b>ZENDESK, INC. Defendant.</b>	§ Case No. 2:16-cv-863-JRG § (Consolidated) §

---

**ZENDESK, INC.'S MOTION TO DISMISS THE AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM**

## **TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. The Asserted Patents Recognize That Networked Computing Already Existed at the Time of the Alleged Invention .....	2
B. Plaintiffs Offer Only Non-Particularized Infringement Allegations in the Amended Complaint .....	5
III. LEGAL STANDARD.....	6
A. Patent Eligibility Is Properly Decided Upon a Motion To Dismiss.....	6
B. 35 U.S.C. § 101 Bars Claims That Recite Abstract Ideas and Lack an Inventive Concept .....	7
IV. ARGUMENT.....	9
A. Step One of the <i>Alice</i> Framework—All of the Asserted Patents Claim Abstract Ideas.....	10
1. The ‘466 Patent Claims the Abstract Idea of Providing Customers with a List of Available Offerings .....	10
2. The ‘578 Patent Claims the Abstract Idea of Customizing a Product To Suit a Customer’s Preferences .....	15
3. The ‘293 Patent Claims the Abstract Idea of Centralized Distribution of a Product or Service .....	18
4. The Asserted Patents Are Not Directed to a Specific Improvement in Computer Technology .....	21
B. Step Two of the <i>Alice</i> Framework—The Asserted Patents Lack an Inventive Concept .....	22
V. CONCLUSION.....	28

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b><u>Cases</u></b>	
<i>Affinity Labs of Tex. v. Amazon.com Inc.</i> , No. 2015-2080 (Fed. Cir. Sept. 23, 2016) .....	28
<i>Affinity Labs of Tex. v. DirecTV, LLC</i> , No. 2015-1845 (Fed. Cir. Sept. 23, 2016) .....	8
<i>Alice Corp. Pty. Ltd. v. CLS Bank Int'l</i> , 134 S. Ct. 2347 (2014).....	passim
<i>American Needle, Inc. v. Cafe Press Inc.</i> , No. 15-cv-3968, 2016 WL 232438 (N.D. Ill. Jan. 19, 2016).....	25
<i>Bascom Global Internet Servs, Inc. v. AT&amp;T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016).....	2, 8, 28
<i>buySAFE, Inc. v. Google, Inc.</i> , 765 F.3d 1350 (Fed. Cir. 2014).....	9, 23, 25
<i>In re Bilski</i> , 545 F.3d 943 (Fed. Cir. 2008) <i>aff'd</i> , 130 S. Ct. 3218 (2010).....	6
<i>Clear with Computers, LLC v. Altec Indus., Inc.</i> , No. 6:14-CV-79, 2015 WL 993392 (E.D. Tex. Mar. 3, 2015), <i>aff'd</i> , 636 F. App'x 1015 (Fed. Cir. 2016) .....	9, 13, 15, 17
<i>Clear with Computers, LLC v. Dick's Sporting Goods, Inc.</i> , 21 F. Supp. 3d 758 (E.D. Tex. 2014).....	6, 9
<i>Cloud Satchel, LLC v. Amazon.com, Inc.</i> , 76 F. Supp. 3d 553 (D. Del. 2014), <i>aff'd sub nom. Cloud Satchel, LLC v. Barnes &amp; Noble, Inc.</i> , 626 F. App'x 1010 (Fed. Cir. 2015) .....	8
<i>Content Extraction &amp; Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n</i> , 776 F.3d 1343 (Fed. Cir. 2014).....	6
<i>DDR Holds., LLC v. Hotels.com, L.P.</i> , 773 F.3d 1245 (Fed. Cir. 2014).....	28
<i>Digitech Image Techs., LLC v. Electronics for Imaging, Inc.</i> , 758 F.3d 1344 (Fed. Cir. 2014).....	17
<i>eDekka LLC v. 3Balls.com, Inc.</i> , No. 2:15-CV-541 JRG, 2015 WL 5579840 (E.D. Tex. Sept. 21, 2015).....	9, 11
<i>Elec. Power Grp., LLC v. Alstom S.A.</i> , No. 2015-1778, 2016 WL 4073318 (Fed. Cir. Aug. 1, 2016) .....	27, 28

<i>Enfish, LLC v. Microsoft Corp,</i> 822 F.3d 1327 (Fed. Cir. 2016).....	21, 22
<i>GT Nexus, Inc. v. Inntra, Inc., No. C 11-02145,</i> 2015 WL 6747142 (N.D. Cal. 2015) .....	20
<i>Gonzalez v. Infostream Grp., Inc.,</i> No. 2:14-CV-906-JRG, 2016 WL 1643313 (E.D. Tex. Apr. 26, 2016) .....	9
<i>Intellectual Ventures I LLC v. Capital One Bank (USA),</i> 792 F.3d 1363 (Fed. Cir. 2015).....	7, 8, 25
<i>Intellectual Ventures I LLC v. J. Crew Group, Inc.,</i> No. 6:16-CV-196-JRG, 2016 WL 4591794 (E.D. Tex. Aug. 24, 2016).....	9
<i>Internet Patents Corp. v. Active Network, Inc.,</i> 790 F.3d 1343 (Fed. Cir. 2015).....	25
<i>Kaavo Inc. v. Cognizant Tech. Solutions Corp., No. CV 14-1192-LPS-CJB,</i> 2016 WL 1268308 (D. Del. Mar. 31, 2016) .....	25, 26, 27
<i>Kroy IP Holds., LLC v. Safeway, Inc.,</i> 107 F. Supp. 3d 677 (E.D. Tex. 2015).....	9
<i>Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.,</i> 66 F. Supp. 3d 829 (E.D. Tex. 2014).....	9, 11
<i>Lumen View Tech. LLC v. Findthebest.com, Inc.,</i> 984 F. Supp. 2d 189 (S.D.N.Y. 2013).....	7
<i>McRO, Inc. v. Bandai Namco Games Am. Inc.,</i> No. 2015-1080, 2016 WL 4896481 (Fed. Cir. Sept. 13, 2016) .....	21, 22
<i>Morales v. Square, Inc.,</i> 75 F. Supp. 3d 716 (W.D. Tex. 2014) <i>aff'd</i> 621 F. App'x 660 (Fed. Cir. 2015).....	6
<i>Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.,</i> 811 F.3d 1314 (Fed. Cir. 2016).....	12, 23
<i>Network Apparel Grp., LP v. Airwave Networks Inc.,</i> No. 6:15-CV-00134, 2016 WL 4718428 (W.D. Tex. Mar. 30, 2016).....	10, 15, 18, 20
<i>NexusCard, Inc. v. Kroger Co.,</i> No. 2:15-cv-968-JRG-RSP, 2016 WL 1162180 (E.D. Tex. Mar. 24, 2016) .....	12, 14, 18, 23, 27
<i>Open Parking, LLC v. ParkMe, Inc.,</i> No. 2:15-cv-976, 2016 WL 3547957 (W.D. Penn. June 30, 2016) .....	10
<i>Orostream LLC v. ABS-CBN Int'l,</i> No. 2:15-CV-248-JRG, 2015 WL 5836949 (E.D. Tex. Oct. 1, 2015).....	9
<i>Open Text S.A. v. Box, Inc.,</i> 78 F. Supp. 3d 1043 (N.D. Cal. 2015) .....	20

<i>OpenTV, Inc. v. Netflix Inc.</i> , 76 F. Supp. 3d 886 (N.D. Cal. 2014) .....	13, 17
<i>Personalized Media Commc'ns, LLC v. Amazon.com, Inc.</i> , 161 F. Supp. 3d 325 (D. Del. 2015).....	18
<i>Preservation Wellness Techs. LLC v. Allscripts Healthcare Sols.</i> , No. 2:15-CV-1559-WCB, 2016 WL 2742379 (E.D. Tex. May 10, 2016) .....	9, 10, 12
<i>Protegrity USA, Inc. v. Netskope, Inc.</i> , No. 15-cv-02515, 2015 WL 6126599 (N.D. Cal. Oct. 19, 2015) .....	14
<i>Rothschild Location Techs. LLC v. Geotab USA, Inc.</i> , No. 6:15-CV-682-RWS-JDL, 2016 WL 3584195 (E.D. Tex. Jan. 4, 2016) .....	23
<i>In Re TLI Commc'n LLC Patent Litig.</i> , 823 F.3d 607 (Fed. Cir. 2016).....	2, 7, 21
<i>Telinit Techs., LLC v. Alteva, Inc.</i> , No. 2:14-CV-369, 2015 WL 5578604 (E.D. Tex. Sept. 21, 2015).....	9
<i>Tenon &amp; Grove, LLC v. Plusgrade S.E.C.</i> , 2015 WL 1133213 (D. Del. Mar. 11, 2015) .....	17
<i>Tuxis Techs., LLC v. Amazon.com, Inc.</i> , Case No. 13-1771-RGA, No. CV 13-1771-RGA, 2015 WL 1387815 (D. Del. Mar. 25, 2015).....	17
<i>Ultramercial, Inc. v. Hulu, LLC</i> , 772 F.3d 709 (Fed. Cir. 2014).....	6, 8, 14
<i>Uniloc USA, Inc. v. E-MDS, Inc.</i> , No. 6:14-CV-00625-RWS, 2015 WL 10791906 (E.D. Tex. Aug. 19, 2015) .....	9, 26
<i>Uniloc USA, Inc. v. salesforce.com, inc.</i> , No. 2:16-cv-00744-JRG, Dkt No. 24 (E.D. Tex. Sept. 30, 2016) .....	1, 14
<i>Versata Dev. Grp., Inc. v. SAP Am., Inc.</i> , 793 F.3d 1306 (Fed. Cir. 2015).....	23
<i>VideoShare, LLC v. Google, Inc.</i> , No. 13-cv-990 (GMS), 2016 WL 4137524 (D. Del. Aug. 2, 2016) .....	15, 18, 20
<i>Voxathon LLC v. Alpine Elecs. of Am., Inc.</i> , No. 2:15-CV-562-JRG, 2016 WL 260350 (E.D. Tex. Jan. 21, 2016) .....	9
<b><u>Statutes</u></b>	
35 U.S.C. § 101.....	1, 6, 7, 10, 11, 28
Fed. R. Civ. P. 12(b)(6).....	1, 28

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.